

Before the  
Administrative Hearing Commission  
State of Missouri



JEREMY and JULIE DAY,

Petitioners,

vs.

DIRECTOR OF REVENUE,

Respondent.

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No. 12-0597 RI

**DECISION**

We dismiss the complaint filed by Jeremy and Julie Day because we lack jurisdiction to hear it at this time.

**Procedure**

On April 18, 2012, Jeremy and Julie Day (“the Days”) filed a complaint appealing an income tax notice of deficiency issued by the Director of Revenue (“the Director”). On May 17, 2012, the Director filed a motion to dismiss supported by an affidavit and copies of the Director’s records. We treat the motion as a motion for summary decision because it relies on matters other than allegations in the complaint and stipulations.<sup>1</sup> We will grant the motion if the Director establishes facts that entitle him to a favorable decision and the Days do not dispute those facts.<sup>2</sup> We allowed the Days until June 4, 2012 to respond to the motion, but they did not respond. Therefore, the following facts are undisputed.

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<sup>1</sup>Regulation 1 CSR 15-3.436(4)(A).

<sup>2</sup>Regulation 1 CSR 15-446(6)(A).

## Findings of Fact

1. On March 21, 2012, the Director mailed the Days a Notice of Deficiency – Individual Income (Form 2944) (“the notice”) concerning the 2010 tax year. The notice states:<sup>3</sup>

**YOU HAVE THE RIGHT TO PROTEST THIS ASSESSMENT.** If you disagree with the assessment of the amounts shown above, you may file a protest. **If you wish to file a protest, you must do so within 60 days of the date of this notice.** An explanation of your options for resolving this notice is enclosed.

The Director’s mailing address is provided on this page of the notice.

2. The notice was sent by certified mail to the Days’ last known address, which was 3864 Country Club Drive, Imperial, Missouri.

3. On April 18, 2012, the Days filed their complaint with this Commission, and we provided the Director with a copy of the complaint on the same day.

4. The Days have not filed a protest with the Director, and the Director has not yet issued a final decision on the issue of their 2010 income tax liability.

5. April 18, 2012 was less than sixty days after March 21, 2012.

## Conclusions of Law

Section 621.050.1<sup>4</sup> gives us jurisdiction over an appeal of “any finding, order, decision, assessment or additional assessment made by the director of revenue.” Before our jurisdiction arises, however, a protest must be filed with the Director and the Director must issue a final decision on that protest.<sup>5</sup>

The Days did not first file their protest with the Director, and the Director has not yet issued a final decision on the protest after we provided him with a copy of it. Therefore, we have

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<sup>3</sup>Motion Ex. A.

<sup>4</sup>Statutory references, unless otherwise noted, are to RSMo 2000.

<sup>5</sup>Sections 143.631.1 and 143.651; *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004) (describing the filing of a protest as the “exclusive remedy for challenging the assessment.”); *State ex rel. Fischer v. Sanders*, 80 S.W.3d 1 (Mo. App., W.D. 2002) (setting forth the protest as a necessary step in appealing a case to this Commission and then to a court).

no jurisdiction over the Days' complaint at this time because the protest procedure has not yet concluded. If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>6</sup>

Although he has not yet done so in this case, in past cases the Director has stated he will consider the date the complaint was filed with this Commission as the date the protest was filed with him.<sup>7</sup> It does not matter in this case whether the Director considers the filing of the complaint with this Commission or the date he was provided a copy of the complaint by this Commission as the date the protest was filed because both events occurred on the same day and are within the period for timely filing a protest under § 143.631. If the Director subsequently issues a final decision as a result of the protest that is unfavorable to the Days, they may appeal the final decision to this Commission at that time.

### Summary

We grant the Director's motion to dismiss the complaint because we lack jurisdiction to hear it at this time.

SO ORDERED on May 28, 2013.

/s/ Nimrod T. Chapel, Jr.  
NIMROD T. CHAPEL, JR.  
Commissioner

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<sup>6</sup>*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

<sup>7</sup>See, e.g., *Headrick v. Director of Revenue*, Case No. 11-1339 RI (Jan. 10, 2012); *Youtzy and Koepke v. Director of Revenue*, Case No. 11-1692 RI (Sept. 27, 2011); *Keele v. Director of Revenue*, Case No. 11-1665 RI (Sept. 27, 2011); *Tompson v. Director of Revenue*, Case No. 11-1603 RI (Sept. 27, 2011); *Gray v. Director of Revenue*, Case No. 11-1578 RI (Sept. 27, 2011); *O'Day v. Director of Revenue*, Case No. 11-1600 RI (Sept. 27, 2011); *Higgerson v. Director of Revenue*, Case No. 11-158 RI (Sept. 20, 2011); *Otto de la Noval v. Director of Revenue*, Case No. 11-1101 (September 12, 2011); *Tooley v. Director of Revenue*, 11-1414 RI (Sept. 1, 2011); *Pate v. Director of Revenue*, Case No. 11-1322 RI (Sept. 1, 2011); *Briggs v. Director of Revenue*, Case No. 11-1163 RI (July 27, 2011).